

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 EVAN BROWN, Individually and on
Behalf of All Others Similarly Situated,

11 Plaintiff,

12 v.

13 PAPA MURPHY'S HOLDINGS INC.,
14 et al,

15 Defendant.

CASE NO. 19-cv-5514 BHS-JRC

ORDER ON PLAINTIFF'S
MOTION FOR APPOINTMENT AS
LEAD PLAINTIFF AND
APPROVAL OF COUNSEL

16 This case has been referred to this Court pursuant to General Order 02-19. This matter is
17 before the Court on plaintiff's Motion for Appointment as Lead Plaintiff and Approval of
18 Counsel. Dkt. 15.

19 This putative class action alleges claims occurring under Section 14(e) and 20(a) of the
20 Securities Exchange Act of 1934 ("the Exchange Act"). The Private Securities Litigation Reform
21 Act of 1995 ("PSLRA") provides that, *inter alia*, the Court is required to appoint a Lead Plaintiff
22 to represent the purported class. *See* 15 U.S.C. § 78u-4(a)(3). Having properly issued a notice
23 providing members of the purported plaintiff class with the information required pursuant to the
24

1 PSLRA, plaintiff now moves for appointment as lead plaintiff in this matter. 15 U.S.C. § 78u-
2 4(a)(3)(A)-(B); Dkt. 5.

3 The Court “shall appoint as lead plaintiff the member or members of the purported
4 plaintiff class that the court determines to be the most capable of adequately representing the
5 interests of class members[.]” or the “most adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(i).
6 The Court presumes that the most adequate plaintiff is the member who has either filed the
7 complaint or made a motion in response to a notice; in the determination of the court, has the
8 largest financial interest in the relief sought by the class; and otherwise satisfies the requirements
9 of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa)-(cc);
10 *see also In re Cavanaugh*, 306 F.3d. 726, 729 (9th Cir. 2002).

11 Here, it appears that no other member has moved for lead plaintiff in this action. Plaintiff
12 advised the Court that two other members previously filed actions arising from the same
13 allegations, but subsequently voluntarily dismissed their claims. As such, plaintiff as the largest
14 financial interest. Regarding the Rule 23 requirements, the Ninth Circuit has held that, at this
15 stage, the only a preliminary showing of “typicality” and “adequacy” are required. *See*
16 *Cavanaugh*, 306 F.3d. at 730; Fed. R. Civ. P. 23(a)(3)-(4).

17 Typicality requires that “the claims or defenses of the representative parties are typical of
18 the claims or defenses of the class[.]” Fed. R. Civ. P. 23(a)(3). The typicality requirement can be
19 satisfied where “other members have the same or similar injury, . . . and [] other class members
20 have been injured by the same course of conduct.” *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d
21 1125, 1141 (9th Cir. 2016) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.
22 1992). At this stage, it appears that plaintiff satisfies the typicality requirement, as the injury to
23
24

1 all putative class members arose from the same conduct—defendants’ alleged material
2 misleading Recommendation Statement. *See* Dkt. 1 at 2.

3 To fulfill the adequacy requirement, the lead plaintiff must “fairly and adequately protect
4 the interests of the class.” Fed. R. Civ. P. 23(a)(4). This rule can be satisfied when “counsel for
5 the class is qualified and competent, the representative’s interests are not antagonistic to the
6 interests of absent class members, and it is unlikely that the action is collusive.” *Miller v. Ventro*
7 *Corp.*, 2001 U.S. Dist. LEXIS 26027, *44 (N.D. Cal. November 28, 2001) (internal citations
8 omitted). As the only class member actively pursuing this claim, it does not appear that
9 plaintiff’s interests are adverse to the class.

10 Although appointment of counsel is subject to the court’s approval, the PSLRA “clearly
11 leaves the choice of class counsel in the hands of the lead plaintiff.” *Cavanaugh*, 306 F.3d. at
12 734. Plaintiff’s selected counsel, Monteverde and Associates, appear to possess the requisite
13 experience in litigating complex class action cases, including securities and merger related cases.

14 Accordingly, plaintiff’s Motion for Appointment as Lead Plaintiff and Approval of
15 Counsel (Dkt. 15) is hereby GRANTED as follows:

- 16 1) Pursuant to 15 U.S.C. § 78u-4(a)(3)(B), Evan Brown is appointed as Lead Plaintiff; and
- 17 2) Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), Evan Brown’s selection of Monteverde &
18 Associates PC (“Monteverde”) is approved and Monteverde is appointed Lead Counsel, and
19 his selection of Breskin, Johnson & Townsend PLLC (“Breskin Johnson & Townsend”) is
20 approved and Breskin Johnson & Townsend is appointed as Liaison Counsel. As Lead
21 Counsel, Monteverde shall have the following responsibilities and duties on behalf of Lead
22 Plaintiff and the putative class:

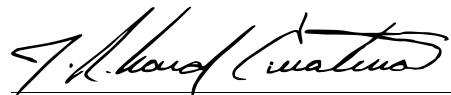
- 23 (a) preparing all pleadings;

- 1 (b) briefing and argument of any and all motions;
2 (c) conducting any and all discovery proceedings;
3 (d) selecting and retaining experts;
4 (e) engaging in settlement negotiations with counsel for Defendants;
5 (f) preparing for trial and conducting the trial of this action; and
6 (h) conducting or overseeing all other matters concerning the prosecution or
7 resolution of this action.

8 The parties are further directed to this Court's order granting the parties' Stipulated
9 Motion Regarding Scheduling (Dkts. 12, 14), which set forth deadlines for the parties to meet
10 and confer regarding the filing of an amended complaint and any response thereto. The parties
11 shall submit to the Court a proposed schedule no later than 28 days after entry of this Order, or
12 October 08, 2019.

13 Plaintiff's Motion for Appointment as Lead Plaintiff and Approval of Counsel (Dkt. 15)
14 is hereby GRANTED. The Clerk of the Court is directed to note October 08, 2019 as the
15 deadline by which the parties must submit to this court a proposed schedule regarding plaintiff's
16 amended complaint and defendants' response.

17 Dated this 9th day of September, 2019.

18
19 

20 J. Richard Creatura
21 United States Magistrate Judge
22
23
24